

U.S.S.N. 10/605,788

6

81084431 (FGT 1867 PA)

RECEIVED
CENTRAL FAX CENTER

AUG 28 2006

REMARKS

In the Office Action of August 8, 2006, claims 1-3, 6-9, and 11-12 are pending. Claim 1 is an independent claim from which claims 2-3, 6-9, and 11-12 depend therefrom. Claim 1 is herein amended.

The Office Action states that claims 4, 5, 10, and 13-20 are withdrawn. The Office Action further states that claims 4, 5, and 10 are withdrawn from further consideration because they do not fall within the elected species cited in the Response of May 19, 2006. Applicants submit that in the May 19th Response the Applicants elected species A, with respect to paragraph 6 of the Office Action of August 5, 2005. Species A is directed to the use of a passive off-board vehicle setting update device, which is recited in claim 3. The Applicants also elected, with respect to paragraph 7 of the Office Action of August 5, 2005, species C, which is directed to the updating of a vehicle setting in response to a bar code. This is recited in claim 5. A bar code is a passive off-board vehicle setting update device. Thus, claim 5 should not be withdrawn from consideration.

Also, in the Response of September 6, 2006, the Applicants elected the species directed to a controller that updates a software setting. The updating of a setting is recited in claim 1. Thus, claim 10 should also not be withdrawn from consideration.

The Office Action states that claim 3 stands rejected under 35 U.S.C. 112 because the meaning of the phrase "passive off-board" is not clear. Applicants submit that the meaning of the term "passive" or "passive off-board", especially in view of the present application, is clear. The term "passive" in combination with "setting update device" refers to a device that does not generate and transmit a signal for setting update information, or in other words, or a device that does not contain any active components or circuitry. An example of a passive setting update device, as provided by the present application, is a bar code. The bar code may be scanned by the claimed sensor. The term "off-board" simply means that it is not located on

U.S.S.N. 10/605,788

7

81084431 (FGT 1867 PA)

the vehicle. The term "active" in combination with "setting update device", on the other hand, refers to a device that generates and transmits a setting update signal. An example of an active setting update device, as provided by the present application, is an update device that contains a transmitter 26, a signal generator 28, and an update controller 30.

As such, Applicants believe that it is clear as to what is meant by the term "passive off-board" in view of the present application. Nevertheless, Applicants have herein proclaimed what is intended by "a passive off-board setting update device" and "an active off-board setting update device".

Applicants also submit that if extrinsic reference sources evidence more than one definition for a term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. See *Brookhill-Wilk I*, 334 F.3d at 1300, 67 USPQ2d at 1137 (Fed. Cir. 2003). The intrinsic evidence is the primary source of claim interpretation. See *Phillips v. AWH Corp.* No. 03-1269, 75 USPQ2d 1321 (Fed. Cir. 2005). The intrinsic evidence includes the claims, the specification, and the prosecution history. Extrinsic evidence includes expert testimony, inventor testimony, dictionaries, treatises, and prior art not cited in the prosecution history. Extrinsic evidence is turned to only when the intrinsic evidence is insufficient to establish the clear meaning of the asserted claim. *Zodiac Pool Care Inc. v. Hoffinger Indus. Inc.*, 206 F. 3d 1408, 1414, 54 USPQ2d 1141, 1145 (Fed. Cir. 2000) and *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582-84, 39 USPQ2d 1573, 1576-78 (Fed. Cir. 1996). Thus, the intrinsic record includes, not just the application, but also the intended interpretations and other related descriptions provided by the Applicants in the prosecution history.

Applicants submit that the Examiner should consider the application, as well as the prosecution history in determining the meaning and scope of the claim terms. The history contains the complete record of all of the proceedings before the Patent and Trademark Office, including any express representations made by the Applicants regarding the scope of the claims. As

U.S.S.N. 10/605,788

8

81084431 (FGT 1867 PA)

such, the record before the Patent and Trademark Office is often of critical significance in determining the clearest meaning of the claims. See *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995).

Thus, the 35 U.S.C. 112 rejection is now overcome.

Claims 1-3, 6-9, and 11-12 stand rejected under 35 U.S.C. 102(e) as being anticipated by Salmeen et al (U.S. Pub. No. 2004/0114381).

Amended claim 1 recites the limitations of a vision sensor that wirelessly detects a vehicle information signal from an off-board vehicle setting update device of a vehicle production line having setting information for a vehicle under production. Claim 1 further recites the limitation of a vehicle controller that has logic to update at least one vehicle setting of the vehicle in response to the vehicle information signal.

Salmeen discloses a vehicle controlled lighting system for a host vehicle. The system of Salmeen detects an object and in response thereto adjusts the illumination output of vehicle headlamps. The host vehicle may detect the object or be in communication with the object.

The Office Action states that Saleem discloses detecting a vehicle information signal from an off-board vehicle setting update device having setting information for the host vehicle. Applicants, respectfully, traverse. Although Saleem discloses the reception of a communication signal from a target vehicle, the communication signal does not contain setting information for the update of host vehicle settings. The communication signal contains or is used to determine the location, speed, and heading of the target object. The communication signal does not contain host vehicle headlight setting information or any other host vehicle setting information.

Furthermore, Saleem fails to disclose a sensor that is configured to wirelessly detect a vehicle information signal from an off-board vehicle setting update device of a vehicle production line having setting information

U.S.S.N. 10/605,788

9

81084431 (FGT 1867 PA)

for a vehicle under production. The sensor of Saleem is configured to detect an impending object.

The Office Action states, on page 5, that the claimed apparatus does not have distinguishing structure over that provided in the relied upon reference. Applicants again traverse. Applicants submit that although Saleem discloses a sensor and a controller, that does not imply that they are the same or similar to the sensor and controller claimed. It is clear from the above arguments, as well as the present application and the Saleem reference, that the sensor and controller claimed are indeed different than that disclosed in Saleem. The claimed sensor and controller function differently, contain different logic, and provide a different end result than that of the sensor and controller of Saleem.

In close review of the claimed invention and the prior art reference one can readily see the substantial differences therebetween. As stated above, the controller claimed collects host vehicle setting information, such as customer preference settings, dealer settings, or manufacturer settings, from an off-board setting update device. On the other hand, the controller of Saleem detects the presence of an object and in response thereto updates the illumination output of vehicle headlamps. Applicants understand that the specific settings provided as examples herein are not explicitly recited in claim 1. However, since host vehicle setting information is not provided to a host vehicle in Saleem, explicit recitation is not necessary.

Applicants are aware that claims, which are directed to an apparatus, must distinguish from the prior art in terms of structure. However, Applicants submit that in reciting devices that contain logic it becomes necessary to describe how the logic functions in order to distinguish the differences between controllers. All controllers are not alike and the disclosure of one controller does not deem all other controllers obvious. This holds true for sensors also.

In order for a reference to anticipate a claim the reference must teach or suggest each and every element of that claim, see MPEP 2131 and *Verdegaal*

U.S.S.N. 10/605,788

10

81084431 (FGT 1867 PA)

Bros. V. Union Oil Co. of California, 814 F.2d 628. Thus, since Saleem fails to teach or suggest each and every element of claim 1, claim 1 is novel, nonobvious, and is in a condition for allowance. Since claims 2-3, 6-9, and 11-12 depend from claim 1, they are novel, nonobvious, and are in a condition for allowance for at least the same reasons.


With regards to claims 3 and 5, the Office Action states that Saleem discloses a passive off-board vehicle setting update device. Applicants submit that the object detected in Saleem does not contain host vehicle update information. Thus, regardless of whether it is passive, it is not the same as the setting update device claimed. Thus, claim 3 is further novel and nonobvious for the above-stated reasons.

Claim 5 recites a passive off-board vehicle setting update device, specifically a bar code. Saleem clearly fails to teach or suggest the use of a bar code. Thus, claim 5 is further novel and nonobvious.

In light of the amendments and remarks, the Applicants submit that all the rejections are now overcome. The Applicants have added no new matter to the application by these amendments. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

ARTZ & ARTZ, P.C.


Jeffrey J. Chapp, Reg. No. 50,579
28333 Telegraph Road, Suite 250
Southfield, MI 48034
(248) 223-9500

Dated: August 28, 2006